IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 5TH DECEMBER 2006 / 14TH AGRAHAYANA 1928

WP(C).No. 29620 of 2006(A)

PETITIONER:

KERALA VYAPARA VYAVASAYI EKOPANA
SAMITHI, RGISTRATION NO.262/81,
VALANCHERRY UNIT, MALAPPURAM,
REPRESENTED BY ITS GENERAL SECRETARY.

BY ADV. SRI.K.P.DANDAPANI

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BNY THE
CHIEF SECRETARY, GOVERNMENT SECRETARIAT,
TRIVANDRUM-695 001.

2. SUB DIVISIONAL MAGISTRATE, TIRUR,
MALAPPURAM DISTRICT.

3. SUB INSPECTOR OF POLICE,
POLICE STATION, VALANCHERRY.

4. P. PRABHAKARAN, PONNATH HOUSE,
KATTIPPARUTHY AMSOM DESOM,
TIRUR TALUK, VALANCHERRY P.O.

5. V.P. ABDU RAHIMAN,
VADAKKEPEDIAKAL, KATTIPARUTHY AMSOM,
THOZHUVANOOR P.O., TIRUR TALUK.

BY ADV. SRI.K.GOPALAKRISHNA KURUP
GOVERNMENT PLEADER SRI.GIKKU JACOB

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WPC NO.29620 OF 2006

PETITIONER'S EXHIBITS:

EXT.P1:- TRUE COPY OF RELEVANT PORTION OF MINUTES OF GB MEETING DATED 26/10/2001 WITH RESPECT TO VALANCHERRY MERCHANTS ASSOCIATION.

EXT.P2:- TRUE COPY OF ORDER DATED 29/7/2003 ISSUED BY SPECIAL GRADE SECRETARY, VALANCHERRY GP.

EXT.P3:- TRUE COPY OF RECEIPT DATED 29/7/2003 FOR RS.239/- TOWARDS BUILDING TAX OF VP III/42, III/423 AND III/424 PAID BY THE PETITIONER.

EXT.P4:- TRUE COPY OF RECEIPT DATED 31/3/2006 FOR RS.242/- TOWARDS BUILDING TAX OF VP III/42, III/423 AND III/424 PAID BY THE PETITIONER.

EXT.P5:- TRUE COPY OF FIR NO.142/03 DATED 6/8/2003 REGISTERED BY THE 3RD RESPONDENT.

EXT.P6:- TRUE COPY OF FIR NO.246/03 DATED 13/12/2003 REGISTERED BY THE 3RD RESPONDENT.

EXT.P7:- TRUE COPY OF COMPLAINT DATED 4/11/2006 PREFERRED BY PETITIONER BEFORE THE THIRD RESPONDENT.

EXT.P8:- TRUE COPY OF FIR NO.360/2006 DATED 4/11/2006 REGISTERED BY THE 3RD RESPONDENT.

EXT.P9:- TRUE COPY OF NOTICE DATED 5/11/2006 ISSUED BY THIRD RESPONDENT TO PRESIDENT OF PETITIONER.

[TRUE COPY]

PA TO JUDGE

R.BASANT, J

W.P.C.No.29620 of 2006

Dated this the 5th day of December 2006

O R D E R

The petitioner has come to this court complaining against Ext.P9 order issued to him by the Sub Inspector of Police, Valancherry, the third respondent. By the said order, the Sub Inspector of Police had informed the petitioner that action under Section 145 Cr.P.C has been initiated by submitting a report to the Sub Divisional Magistrate and till then the petitioner or persons belonging to his organisation namely Vyapari Vyavasayi Ekopana Samithi should not enter the disputed building.

2. Interim order was granted keeping Ext.P9 order under suspension and the learned Public Prosecutor was directed to take instructions and make submissions.

3. Respondents 4 and 5 have also entered appearance before this court. The learned Public Prosecutor represents Respondents 1 to 3. It is brought to the notice of the court that the second respondent Sub Divisional Magistrate has already initiated proceedings under Section 145(1) Cr.P.C. M.C.362/06 is pending before the Sub Divisional Magistrate and the parties were directed to appear before the Sub Divisional Magistrate on 10/11/2006 to file statements of claim under Section 145 Cr.P.C. It is further submitted

that both the contestants have already appeared before the Sub Divisional Magistrate.

4. I do not, in these circumstances, find any justification in this writ petition continuing to be pending before this court. The Sub Divisional Magistrate is already seized of the matter. Order under Section 145(1) has already been passed. The parties have been given the right to appear and put in their statements of claim. It is for the Sub Divisional Magistrate now to attempt to expeditiously dispose of the proceedings under Section 145 Cr.P.C. Needless to say, if the Sub Divisional Magistrate perceives any satisfactory reason to take action under Section 146 Cr.P.C pending the final disposal of the proceedings under Section 145 Cr.P.C, the Sub Divisional Magistrate shall be at liberty to do the same.

5. Ext.P9 order is certainly not justified and it can be directed that Ext.P9 order shall not be enforced by the third respondent.

6. In the result, this writ petition is allowed in part. It is directed that Ext.P9 order shall not be enforced. Parties shall be at liberty to raise all their contentions before the Sub Divisional Magistrate in the proceedings already initiated under Section 145 Cr.P.C.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006